

**DEQ Response to Comments in regard to the Proposed Purchase Option
Agreement between the State of Idaho and Eagle Crest
June 5, 2003**

Written Comments

Two written comments were received regarding the proposed Purchase Option Agreement. One comment was in support of the State doing what it can to help Eagle Crest and development in the valley. Comments from the remaining commentor are addressed below.

Comment:

1. *Use of the land for a golf course could be done, while protecting children from absorbing lead in their blood, however the planned use for residential development is not acceptable. It is the height of recklessness and irresponsibility to allow children to live at "ground zero" where the lead smelter and zinc plant discharged highly bioavailable lead compounds on the land surface. Future incidents of lead poisoning in children will surely occur if residences are built on the land, which is and always will be an industrial site. The DEQ can expect to be involved in litigation when the lead poisoning incidents occur because of this proposed transfer and designated use for residential development. In addition, should lead poisoning cases occur, the economy of the Silver Valley will be severely impacted once again. There is no legitimate reason to take this risk, when plenty of land is available for residential development away from "ground zero."*

Response:

The golf course and residential area development will have to comply with the local Institutional Controls Program (ICP) administered by the Panhandle Health District. The ICP was designed to protect installed remedies and to guide development projects so that appropriate barriers are installed to protect human health and the environment. The Purchase Option Agreement requires Eagle Crest to comply with the ICP. DEQ has provided the PHD with sampling data for the soils in the area of the golf course and residential area developments. This data was provided to Eagle Crest so they can utilize it in developing their cut and fill plan. The EPA ROD calls for soils above 1000 ppm lead to be remediated. The ICP will require that up to 12 inches of a clean soil barrier (lead < 100 ppm) be installed in the residential yards of the project. These are the same requirements that have been applied to the rest of the communities in the Box and will apply to any other future development projects in the Box.

Comment

2. *Why did DEQ decide that the golf course and residential development was the best and only use of the land, instead of mining for example?*

Response

DEQ has not made the decision that the golf course and residential development was the best and only use of the hillside area. DEQ has made the decision to consider the Eagle Crest proposal in consultation with local government officials and the public. Eagle Crest received approval from both City of Kellogg and Shoshone

County for their golf course and ski area planned unit development. The City of Kellogg annexed the proposed development area in June of 2002. The golf course proposal is consistent with Kellogg's current land use plan. This golf course proposal is also consistent with the 1993 Peaks and Valley Study for the Central Silver Valley that stated as one of its objectives is to create a "nationally attractive recreation and tourism complex." DEQ has been very careful to work with the local land use planning jurisdictions to make sure that the type of development that occurs on government property is consistent with local plans.

Comment

3. *Why does DEQ not require a feasibility study for the golf course when Sullivan is required to conduct a feasibility study for a mining operation and refinery in order to get "free land?"*

Response

Eagle Crest has conducted feasibility studies for a golf course in the Silver Valley. Additionally, Eagle Crest has provided financial information to DEQ demonstrating their ability to construct the golf course. If the Sullivan Mining Company were in the same position as Eagle Crest with regard to completing economic feasibility studies and having cash on hand to do the zinc plant project, DEQ would be happy to consider the Sullivan proposal. Eagle Crest is also reimbursing the State for its out-of-pocket expenses associated with the land transfer. This type of reimbursement would in similar cases be expected of others.

Comment

4. *Sullivan requests the same or similar option agreement for the zinc plant site, mine access site in Government Gulch, and tailings stack in Grouse Gulch. We have submitted maps to Chuck Moss of the Governor's Office for the needed land.*

Response

As stated in response 3, DEQ is willing to consider the proposal when Sullivan has completed their feasibility work associated with the proposed Zinc Plant.

Comment

5. *Easements would be needed by Sullivan for pipelines connecting the zinc plant site with the CTP.*

Responses

See responses 3 and 4.

Comment

6. *How can the DEQ transfer railroad rights of way to Eagle Crest when the rights of way are part of the Rail Bank program and subject to future use as railroads?*

Response

The railroad rights of way that are in question is the old spur that went up into the industrial complex from the main line. This spur is not part of the Rail Bank program.

DEQ will seek to obtain the rights of way from the railroad and then convey them to Eagle Crest.

Comment

7. *In addition to a similar option agreement, Sullivan would appreciate a prompt confirmation by DEQ that the land needed for the mine access, refinery and tailings storage is still available. We hear many rumors of other planned uses and about transfer of land to the City of Kellogg.*

Response

No property in Government Gulch is being transferred to Eagle Crest. Current access to the Bunker Hill mine is unaffected by the proposed land transfer to Eagle Crest.

DEQ has been in negotiations with Eagle Crest and the City of Kellogg only. The property under discussion with Eagle Crest is described in the proposed purchase option agreement. DEQ and the City of Kellogg are in conceptual agreement to transfer the current DEQ Project Office at 1005 W. McKinley to the City. This proposal was discussed at a Kellogg City Council meeting in January 2003. The McKinley Avenue right-of-way will also be deeded to the City of Kellogg.

Comments from Public Meeting

A meeting was held on February 5, 2003 to take public comment. Ten commentors supported the Purchase Option Agreement as presented. Two commentors raised questions. These are addressed below.

8. *The commentor had concerns about liability and recommended not approving the Purchase Option Agreement.*

Both parties to the proposed agreement have concerns about liability. In the option agreement Eagle Crest would be responsible for environmental liabilities not related to the Superfund Action. Thus, discovery of contaminants related to the mining and smelter complex, would be the responsibility of Superfund cleanup. The only exception to this would if Eagle Crest was out of compliance with the ICP and allowed some of the Superfund wastes to be released from the environment. Other types of environmental liabilities would be the responsibility of Eagle Crest just as they would be at any other location in Idaho.

9. *The commentor also expressed concerns about media depictions of the area using the example of criticisms of contamination in school interiors. Through testing, the schools were shown to be essentially free of lead contaminated dust. The commentor expressed concern that such depictions are hard to erase even when studies show them to be incorrect.*

The State of Idaho shares the concerns about the “bad” news that seems to get so much attention in the media. It is hoped that positive events such as the Eagle Crest proposal will help erase the stigma and people will recognize the benefits of the

cleanup and the positive aspects of life in the Silver Valley. Eagle Crest has indicated that their interest in doing development at this site is in part predicated on the fact that the area has been cleaned up and the ICP provides direction and assistance with development and certainty in regard to future liability.

10. What is the status of Superfund delisting for the area under consideration by Eagle Crest? What is the possibility of EPA requiring re-remediation of the area?

EPA has not deleted the hillside area from the Superfund list. The EPA Record of Decision for this area calls for stabilization of the hillsides to prevent contaminant migration and the establishment and enforcement of institutional controls to address future construction activities. Compliance with the current ICP satisfies the ROD requirement and is consistent with the standards applied to the rest of the community. Additionally, construction of a golf course in this area would result in a more stable environment that would receive a high level of maintenance associated with running a golf course. The reason EPA would return to the site would be due to failure of the ICP or some sort of catastrophic event causing remedy failure.

11. Do mineral rights get transferred with the surface rights?

Yes.

12. Are there concerns about blowing dust from Government Gulch and the hillsides affecting the golf course in such a manner that EPA would come back into the golf course area for additional remediation work?

Active dust sources causing exposures to humans or creating potential recontamination have been largely controlled by the Superfund Remediation at the site. Government Gulch was originally not identified as a significant dust source affecting populated areas. This was probably due to its isolation from residential areas. The soils in the bottom of Government Gulch have now been revegetated and do not represent a blowing dust source. The main source of blowing dust on unvegetated hillside areas would be associated with vehicular traffic. Dust from this source can be easily controlled by BMPs required under the ICP.